

1979 S.C. Op. Atty. Gen. 50 (S.C.A.G.), 1979 S.C. Op. Atty. Gen. No. 79-36, 1979 WL 29042

Office of the Attorney General

State of South Carolina

Opinion No. 79-36

February 28, 1979

***1 SUBJECT: Enforced Collection Of Municipal Property Taxes.**

(1) The only provisions authorizing penalties and enforced collection of taxes by municipalities are in Chapter 51 of Title 12 of the 1976 Code of Laws.

(2) The provisions of Chapter 51 of Title 12 are mandatory when adopted. This procedure cannot be piecemeal adopted.

(3) A municipality may not enact a flat penalty or collection charge for delinquent taxes.

(4) A separate ordinance is not required to levy taxes if the adoption of a budget includes a provision levying taxes.

TO: David H. Crum, Esq.

Denmark City Attorney

QUESTIONS:

(1) Are the penalties, costs, execution fees, expenses of sale, etc., limited to the amounts specified in 12-45-180, 12-49-580, 12-49-746, or should the City elect to come under 12-51-10, et seq., to those specified in 12-51-30 and 12-51-40?

(2) If the City elects to come under 12-51-10, et seq., are the time tables in 12-51-40 mandatory? In other words, must the certified letter be mailed and the property be taken possession of before the additional cost of 5% be imposed on September 1? Must the City in a short time after imposition of the 5% as additional cost proceed to advertise? Is the word 'costs' in this Section and Section 12-51-50 limited to the execution cost of 5% and the additional cost of 5%, or are advertising costs or a flat extra charge permitted?

(3) The City desires to impose a flat collection charge on January 15 for past due taxes, but I have advised it that this would be illegal.

(4) Also, in Section 5-7-260, sub-paragraph (3), what do the words mean 'except as otherwise provided with respect to the property tax levied by adoption of a budget'? I can find no other statute bearing on this matter and thus do not see where anything is 'otherwise provided'.

DISCUSSION ON QUESTION 1:

Act No. 283 of the 1975 General Assembly, the Home Rule Act, repealed the provisions in Title 47 of the 1962 Code of Laws relating to penalties and the enforced collection of municipal taxes. The only provisions now in effect except the Home Rule provisions are found in Chapter 51 of Title 12 of the 1976 Code of Laws. Specifically, these provisions are the alternate procedure previously in force for the collection of taxes.

In response to your Question 1, we advise, therefore, that the City may adopt these provisions as a means of enforcing the collection of taxes.

DISCUSSION ON QUESTION 2:

We believe that the provisions of Chapter 51 of Title 12, if adopted, are mandatory. In an opinion of this office dated June 14, 1978, it was said that the procedure in such chapter may not be adopted in part, but must be adopted as an entire procedure. Our opinion is that a special penalty cannot be adopted as a general penalty is provided.

The penalties provided are a 5% penalty on March 15 following the tax year which is for execution costs. After seizure of the property pursuant to notice, an additional 5% penalty for costs may be added. The penalty is authorized only after seizure. Deviation from this procedure may void action to enforce the collection of a tax. The rule of strict compliance of penal statute applies. [Independence Ins. Co. v. Independent Life & Acc. Ins. Co.](#), 218 S. C. 22, 61 S. E. 2d 399; [Callison v. National Linen Service Corp.](#), 225 S. C. 232, 81 S. E. 2d 342.

DISCUSSION ON QUESTION 3:

*2 The City is without authority to levy a flat collection charge or penalty for delinquent taxes. The only procedure for collection of delinquent taxes is set forth in Chapter 51 of Title 12 of the 1976 Code of Laws. It is clear that the City can act only pursuant to authority granted by statutes. [Watson v. Orangeburg](#), 229 S. C. 367, 93 S. E. 2d 20.

DISCUSSION ON QUESTION 4:

We find no statute that relates to the language 'except as otherwise provided with respect to the property tax levied by adoption of a budget'. The only meaning that we can ascribe to this additional language is to show an intent that a separate ordinance is not required to levy taxes if as a part of the adoption of a budget a tax levy is provided.

CONCLUSIONS:

- (1) The only provisions authorizing penalties and enforced collection of taxes by municipalities are in Chapter 51 of Title 12 of the 1976 Code of Laws.
- (2) The provisions of Chapter 51 of Title 12 are mandatory when adopted. This procedure cannot be piecemeal adopted.
- (3) A municipality may not enact a flat penalty or collection charge for delinquent taxes.
- (4) A separate ordinance is not required to levy taxes if the adoption of a budget includes a provision levying taxes.

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Senior Assistant Attorney General

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